HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 619 (M/S) of 2002

Mohan Singh Rautela

Son of Late Khim Singh

Rautela, Resident of

Khazanchi Mohalla

Almora …… Petitioner

Versus

(1) District Judge Almora
(2) Rajesh Kumar Sah

Son of Late Jawahar Lal

Sah, Resident of Nivedita

Kutir Almora

(3) Girish Chandra Sah

Son of Late Jawahar Lal

Sah, Resident of Nivedita

Kutir Almora

(4) Smit. Janki Devi Wife

Of Late Jawahar Lal Sah

Resident of Nividita Kutir

Almora

(5) Smt. Vijaya Laxmi Sah

Wife of Sri Madan Lal Sah

Resident of Khazanchi Mohalla

Almora

(6) Smt. Shashi Prabhu Rout Wife

of Sri N.C.Rout C/o 56 A.P.O.

(7) Smt. Suman Sah Wife of

Sri Vimal Kumar Sah, Resident

Of Rajani Gandha Bhotia Parao

Haldwani …… Respondents

Dated:**1.10.2003**

Hon'ble Rajesh Tandon, J.

By the aforesaid writ petition the petitioner has challenged the order passed by the District Judge Almorah arising out of the appeal filed by the landlord Sri Rajesh Kumar Shah and others. The learned District Judge has allowed the appeal and as such the application U/s 21(1)(a) of U.P. Act No. 13 of 1972 stands allowed for releasing the accommodation in favour of the landlord.

Brief facts giving rise to the present writ petition are that an application was filed by Sri Jawahar Lal Shah S/o Late Sri Dhanni Lal shah in respect of the premises situate at Khazanchi Mohalla Almora . It was stated by the landlord that two rooms of IInd storied house and two rooms of third story house of the, kitchen, store room and in the second adjacent house has one room including latrine and on the second story there is one room thus total six rooms are in possession of the petitioner.The details have been given in para 2 of the application . The same are described below:-

कि इनमें से एक मकान जो बाजार की तर्फ है उसके दो मन्जिले के दो कमरे तथा तीसरी मन्जिल के दो कमरे मय किचन,स्टोर रूम और दूसरा मकान जो पीछे गली की ओर है उसके सबसे नीचे की मन्जिल में एक कमरा मय लैटरीन ,बाथरूम तथा इसी मकान के दो मन्जिले में एक कमरा, बरामदा इस प्रकार दोनो मकनों में 6 कमरे

,एक स्टोर रूम, बरामदा, ऑगन ,लैटरीन ,बाथरूम विपक्षी के कब्जे में बतौर किरायेदार चला आता है। बाजार की तर्फ वाले मकान के दो मन्जिलें में केवल एक छोटा सा कमरा जो स्टोर रूम है वह प्रार्थी के कब्जे में है। इसके अलावा और कोई भाग उक्त दोनों मकानों का पार्टी के कब्जे में नहीं है।

It was stated by the landlord in his application U/s 21(a) of U.P. Act 13/72 to the effect that when the building was given on rent to the petitioner tenant, the family of the landlord was not grown up and now gradually the family has grown up and therefore accommodation is required for the family of the landlord.. It was stated that the two sons of the landlord have been married and want to reside separately. They are also intending to do independent business and as such the petitioner requires the premises bonafide. The landlord Sri.Jawarhar Lal has stated that he is residing in Oklay House and the same is far away from the city and due to paucity of accommodation the family members are suffering great hardship as neither they are able to reside comfortably nor they are able carry on do business independently.

It was stated that there has been a complete change in the circumstances of the tenant petitioner right from 1966, as the he has purchased a property known as “Shiv Bhawan” and he has obtained the possession after getting it vacated from the tenants. He has available with him another building near Bus Station Almora and further there is a sweet shop belonging to the tenant petitioner in the city of Almora.

The application U/s 21 of Act No. 13 of 1972 was got amended after the death of Sri Jawahar Lal . During the life time of Sri Jawahar Lal he executed a Will on 1.1.89 and by virtue of the will Sri Rajesh Kumar Shah was given the entire disputed properly and Sri

Girish Shah was given entire Oklay house. The amendment was allowed and the petitioner has amended is application by adding paragraphs 7 (b) and (c) in the application U/s 21 of the Act.

The petitioner has filed a written statement and has contested the application U/s 21(1)(a) of the Act. It was stated that the petitioner has sufficient accommodation and need is genuine. Prescribed Authority has rejected the application. Aggrieved by the aforesaid orders, the landlord have preferred an appeal before the District Judge, the same has been allowed hence the present writ petition has been filed by the petitioner.

I have Heard Sri. V..K.Bisht for the petitioner tenant and Sri.Harsh Vardhan Shah for the landlord respondents at great length. Both the parties have already exchanged their pleadings Both the parties have stated that the 'Writ Petition may be decided finally.

Findigs of Bonafide requirements of the landlord

The landlord as will appear for his application has filed the application for release under Section 21(1)(a) of U.P. Act of 1972 on the ground that after letting of their accommodation to the petitioner. the family of the landlord has grown up and thereafter accommodation is required for the family of the landlord. Two sons of the landlord have been married and quite to reside that their family members independently. The original landlord has expired during the pendency of the case. In pursuance of the will of the landlord the family in dispute has come to the share of Rajesh Kumar Shah . Sri R. K Shah has set up his requirement by amending the application to the following effect.

The requirement of Sri Rajesh Kumar Shah as shown in the amended application is quoted below:-

कि राजेश साह रक्षा विभाग के डी.आर.डी.ओ. संस्थान में कार्यरत हैं तथा अक्सर नौकरी के सिलसिले में बार्डर क्षेत्रों में रहता है। राजेश साह का विवाह हो चुका है उसके परिवार के निम्न सदस्य है :–

पुत्र अर्पित ,उम्र 11वर्ष जो कि कक्षा 6 में अध्ययन रत है तथा पुत्री अदिति उम्र 8 वर्ष जो कि कक्षा 4 में अध्ययरत है। पत्नी तथा राजेश साह की मॉ जानकी देवी भी राजेश साह के साथ रहती है।

कि चुॅकि अल्मोडा में उसको निवास उपलब्ध नहीं है तथा सम्पूर्ण ''ओकेले हाउस '' में गिरीश साह स्वयं अपने परिवार के साथ रहता है तथा अपना होटल व्यवसाय इस भवन में करता है। तथा जहॉ तक ''ओकले हाउस '' में राजेश साह के पिता द्वारा दिये गये सागर पेसों का प्रशन है उसमें कुछ आउट हाउस टूट गये है तथा बाकियों में सफाई कर्मचारी इत्यादि रहते है। तथा ये आउट हाडस किसी भी प्रकार राजेश साह की सामाजिक स्थिति के अनुरूप रहने योग्य नहीं है और न ही इनमें बिजली, पानी व शौचालय इत्यादि की सुविधा ही है। इसलिये राजेश साह ने अपने परिवार को हल्द्वानी में अपने ककिया श्वसुर के घर पर रखा हुआ है तथा अपने बच्चों को मजबूरी में हल्द्वानी के विघलयों में ही अध्ययन करवा रहा है।क्योंकि उस का भाई गिरीश लाल साह उसे अपने साथ रखने को कतई तैयार नही है इसलिये राजेश साह को अपनी रिहाइस के लिये विवादित भवन की अत्यंत आवश्यकता है कि जवावहर लाल साह की मृत्यु के उपरान्त उनकी वसीयत के अनुसार सम्पत्तियों को दाखिल खारिज भी राजेश साह व गिरीश के नाम तदनुसार नगर पालिका में हो चुका है।

कि इसके विपरीत विपक्षी द्वारा अपने भवन कोणर्क होटल में ''ग्रामीण बैंक '' को काफी जगह किराये पर दी है जिसमें बैंक के

मैनेजर की रिहायत हेतु भी जगह दी गई है तथा साथ ही विपक्षी द्वारा ''शिव भवन '' नामक भवन को आवास हेतु निर्मित करने के लिये न.पा. अल्मोडा में मानचित्र भी प्रस्तुत किया है। अतः यह स्पष्ट है कि विपक्षी उसके परिवार के रिहाइस के लिये विपक्षी के पास अपने दो भवन जबकि प्रार्थी राजेश साह के पास विवादित सम्पत्ति के अतिरिक्त न.पा. अल्मोडा की सीमा के अंतर्गत अपने व अपने परिवार के रिहाइस के लिये कोई स्थान उपलब्ध नहीं है।

The tenant petitioner has also admitted that he has purchased 'Shiv Bhawan':-

कि प्रार्थना पत्र क प्रस्तर संख्या 5 में विपक्षी द्वारा शिव भवन खरीदना स्वीकार है,परन्तु यह स्वीकार नही है कि इस इमारत में बडे–बडे काफी कमरे है तथा काफी बडा कम्पाउन्ड है शिव भवन में रहने योग्य केवल 3 कमरे है । और शैष अगल–बगल के कमरे बहुत छोटे–छोटे हैं।

Infact the building of hotel was also admitted. The same is quoted below:-

कि प्रार्थना पत्र के प्रस्तर संख्या 6 में बस स्टेशन के समीप विपक्षी का एक होटल के लिये इमारत का निर्माण किया जाना स्वीकार है,जो केवल होटल के प्रयोजन के लिये बनाई जा रही है और अभी निर्माणधीन है। विपक्षी की मिठाई की एक दुकान होना स्वीकार है,शेंष प्रस्तर जिस प्रकार लिखा गया है, स्वीकार नही हैं।

Further admission have been made by the petitioner regarding vacant portions obtained by the tenant petitioner in paragraph 16 and 17 of the written statement:-

कि विपक्षी ने लगभग 15 वर्ष पूर्व शिव भवन खरीदा था, जिसमें उघोग विभाग का दफतर था और वह आवासीय था, यह मकान विपक्षी

ने अपनी व्यवसाय व कार्यालय के लिये खरीदा था जिसमें दो कमरों में विपक्षी का दफतर तथा शेष कमरों में गोदाम था। यह भवन मालरोड से मिला हुआ होने के कारण बिपदा थी ।परन्तुं जब विपक्षी को स्वयं निवास के लिये स्थनाभव हुआ तो उसको विवश होकर अपना गोदाम कुछ कमरों से हटाना पडा और अपने तीन पुत्रो एक पौत्र,एक पुत्र वधु व नौकर के लिये शिव भवन में स्थान बनाना पडा ,दो कमरों में अभी भी विपक्षी का दफतर है।

कि मिठाई की दुकान,व कोनार्क होटल जो अभी निर्माणधीन है,परिवार के आवास के योग्य नहीं है, क्योकि वह तिजारत के प्रयोजन के है।मिठाई की दुकान व्यवसाय हेतु किराये पर ली गई है।

The landlord petitioners have filed the documents of Nagar Palika52ग/52ग/5 . Copy of the assessment reported copy of the will etc . Apart from that at the side of the landlord Sri Girish Chandra Shah and Ravindra Lal Shah have filed their affidavit's showing the need of the Landlord in order to accommodate the growing family.

The petitioner has filed the copy of the compromise deed dated 44ग , 44ग affidavit and filed the affidavit's of Mohan Singh Raukela ,Anand Singh Raukela ,Jagmohan shah.

During the pendency of the case a commissioner was appointed who has given his report. The details of the availability of the accommodation with the tenant is given below:-

''सर्वप्रथम मालरोड पर स्थित भवन जिस पर होटल कोनार्क का बोर्ड लगा है, का मुआयना किया। इस होटल में बैसंमेंट वाले भाग में मालरोड की तरफ से नैनीताल अल्मोडा क्षेत्रीय ग्रामीण बैंक का कार्यालय है। इसमें 2 कमरे है, जिनकी लम्बाई चौडाई क्रमश 17 फिट 6इंच x 13फिट x 6इंच (प्रथम कमरे) व 37 फिट x 13फिट दूसरे कमरे की है। उक्त भवन का यह भाग बैंक के व्यवसायिक इस्तेमाल

हेतु है।मुआयने में पाया, कि बैंक के प्रबन्धक का आवास उक्त कोणार्क होटल में नहीं है। मौके पर वर्तमान बैंक प्रबन्धक श्री आशुतोष जोशी ने भी बताया कि उक्त होटल में उनका या उनके पूर्ववर्ती किसी भी प्रबन्धक का कभी भी आवास नहीं रहा। जिस बावत एक लिखित पत्र भी उन्होंने मुझे दिया, जो निम्न है।

इसके पश्चात चौधानपाटा स्थित जिला पुस्तकालय के सामने बन रे दुमंजिला भवन निर्माणधीन भवन का मुआयना किया व मौका नक्शा तैयार किया, उक्त भवन अभी निर्माण ही प्रक्रिया में है, उक्त भवन का भूतल कालॅम व बीमों पर बन रहा है,कालॅम व बीमो की लम्बाई x चौडाई नक्शा मौके पर दर्शित की गई है.....फर्श पर 5बीमें पडी है। जिनकी लम्बाई x चौडाई मोटाई 17'' 4'' 12'' है। भूतल के उक्त क्षेत्र ए में कुल 16 कालॅम है ,उनकी लम्बाई चौडाई 9'' 18'' है। भूतल से पीछे की ओर कुछ कमरे अर्ध निर्मित अवस्था में है। दरवाजे खिडकिया पर चौखटें लगी है। फर्श नहीं पडा हैं। प्रथम तल में बने रहे कमरों का नक्शा मौका संलग्न है। उक्त प्रथम तल भी अभी निर्माणधीन है। वं फर्श पर प्लास्टर इत्यादि नहीं हुआ है। दरवाजो वखिडकियों पर केवल चौखटें लगी हैं।

So far as the bonafide requirements of the landlord is concerned .Rajesh Kujmar Shah has proved from his affidavit that his wife and children have no accommodation to stay and they are residing in his sasural. Since Rajesh Kumar Shah remains outside in the Indian Army, there is no place to live for his family members. The family of Sri Rajesh Kumar consists of following members:-

Arpit son 11 years

Daughter – Aditi -8years

Wife of Rajendra Kumar Shah

Smt. Janki Devi

There is a clear admission in para – 7(b) of the amended application that his brotheris not willing to keep the family of Rajesh shah.The same is quoted below:-

कि राजेश साह रक्षा विभाग के डी.आर.डी.ओ. संस्थान में कार्यरत हैं तथा अक्सर नौकरी के सिलसिले में बार्डर क्षेत्रों में रहता हैं। राजेश साह का विवाह हो चुका है उसके परिवार के निम्न सदस्य है :–

पुत्र अर्पित ,उम्र 11वर्ष जो कि कक्षा 6 में अध्ययन रत है तथा पुत्री अदिति उम्र 8वर्ष जो कि कक्षा 4 में अध्ययरत है। पत्नी तथा राजेश साह की मॉ जानकी देवी भी राजेश साह के साथ रहती है।

इसलिये राजेश साह ने अपने परिवार को हल्द्वानी में अपने ककिया श्वसुर के घर पर रखा हुआ है तथा अपने बच्चों को मजबूरी में हल्द्वानी के विघालयों में ही अध्ययन करवा रहा है।क्योकि उस का भाई गिरीश लाल साह उसे अपने साथ रखने को कतई तैयार नहीं है इसलिये राजेश साह को अपनी रिहाइस के लिये विवादित भवन की अत्यंत आवश्यकता है कि जवाहर लाल साह की मृत्यु के उपरान्त उनकी वसीयत के अनुसार सम्पत्तियों को दाखिल खारिज भी राजेश साह व गिरिश के नाम तदनुसार नगर पालिका में हो चुका है।

अतः यह स्पष्ट है कि विपक्षी उसके परिवार के रिहाइस के लिये विपक्षी के पास अपने दो भवन जबकि प्रार्थी राजेश साह के पास विवादित सम्पत्ति के अतिरिक्त न.पा. अल्मोडा की सीमा के अंतर्गत अपने व अपने परिवार के रिहाइस के लिये कोई स्थान उपलब्ध नही है।

The findings of the appellate authority with regard to bonafide need are as under:-

जवाहर लाल साह के पास विवादित मकान जो विपक्षी की किरायेदारी में है और एक ओकले हाउस है जिनके लिये मुल वसीयत दाखिल की गई है। ज्वाहर लाल साह की मृत्यु हो चुकी है। वसीयत के अनुसार ओकले हाउस गिरिश चन्द्र साह को मिला है और विवादित मकान राजेश कुमार साह को मिले है। इन दोनों मकानों के अलावा अन्य कोई मकान इस समय राजेश कुमार साह या गिरिश चन्द्र साह के पास नही है। वर्तमान में विवादित मकान का तन्हा मालिक राजेश कुमार साह और ओकले हाउस का तन्हा मालिक गिरिश चन्द्र साह है।

So far as bonafide need is concerned , the Appellants authority has recorded in favour of the landlord, their being ample evidence on the record to prove bonafide need of the landlord, the findings therefore recorded by the appellate authority therefore needs no interference.

Findings on Comparative Hardship

So far as comparative hardship is concerned, admittedly the petitioner tenant is affluent person and has got several properties at Almora. As will appear from the following admission made in his written statement.

The appellate authority has also recorded a finding that tin these circumstances explanation is applicable to the facts of the case as the tenant has constructed his own house. Explanation to section (1) (a) is quoted below.

"Where the tenant or any member of his family [who has been normally residing with him or is wholly dependent on him] has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area , no objection by the tenant against an application under this sub-section shall be entertained."

"Where the tenant or any member of his family (who has been normally residing with him or is wholly dependent on him) has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained. For the purpose of this clause a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purpose as a tenant, allottee or licensee."

However,apart from the explanation there is sufficient evidence on the record that the need of the landlord Rajesh Kumar Shah is bonafide. Comparitive hardship also lies in his favour as after the death of his father, no other property is available to him in pursuance of the will of his father and further the names have also been recorded in the Nagar Palika record. Thus bonafide need and comparative hardship both lies in favour of the landlord Rajesh Kumar Shah.

Rule 16 (1) (C) provides that where the tenant has available with him the accommodation .The claim of the landlord shall be constructed liberally .It reads as under:-

"Where the tenant has, apart from the building under tenancy, other adequate accommodation . Whether owned by him or held as tenant of any public premises, having regard to the number of members of his family and their respective ages and his social status the landlord's claims for additional requirement shall be construed liberally."

It is a case where the landlord will suffer greater hardship than the tenant. The tenant is a affluent person .He has available with him following properties and such the comparative hardship does not lie in favour of the tenant.

(1) There is a building known as Konark Bhawan.

(2) There is a building where constructions are complete for resideintial purposes.

However,apart from the explanation there is sufficient evidence on the record that the need of the landlord Rajesh Kumar Shah is bonafide. Comparitive hardship also in his favour of Rejesh Kumar Shah as after the death of his father, no other property is available to him in pursuance of the will of his father and further the names have also been recorded in the Nagar Palika record. Thus bonafide need and comparative hardship both lines in favour of the landlord Rajesh Kumar Shah.

Relevant case law on bonafide need and comparative hardship

Relying upon the findings of Apex Court in Mst Bega Begum and others V. Abdul Ahmad Khan 1986 SCFBRC Rent cases p-346 ,it has been held in 1992 (1) ARC page-18 that the need of the landlord cannot be said to be arbitrary if he has no legal right to live on account of family dispute. The observations are quoted below:-

> *"To establish the bonafide need, it has to be seen that the respondent No. 2was living in the rented accommodation along with her brother-in-law. It cannot be doubted that the tenancy was in favour of Sri. G.R. Anand who got the telephone and water connections istalled in his name, was paying the rent to the landlady and has also got valid ration card.The possession of respondent No.2 was with the permission of the tenant, may ba as a family member but as the respondent No.2 was not possessing any legal right to remain in possession ,it may be that on account of some family dispute, the relations might have become strained which may hve necessitated the eviction from*

the premises 64-A. Lyton Road and for that reason the need of release of the disputed accommodation. The findings of the Appellate Court for the bonafide need of respondent No.2 cannot be treated to be arbitrary or based on extraneous considerations or more desire. The learned District Judge has noted various decisions on the word 'bonafide' and has also mentioned the case of ***Mst. Bega Begam and others V.Abdul Ahmad Khan, 1986 SCFBRC 346.*** *In the said decision, it has been hold as under:*

"The expression reasonable requirement" undoubtedly postulates that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so to make even the genuine need as nothing but a desire. The connotation of the term 'need' or 'requirement' should not be artificially extended nor its language so unduly stretched or strained so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds."

Similar, view was taken in (1996) 6 SCC p-373 where the Apex Court has held that the tenant has no right to object to the partition made amongst family members . The findings are quoted below:-

"If, however, all the co-owners or the co-lessors agree among themselves and split by partition the demised property by metes and bounds and come to have definite, positive and identifiable shares in that property, they become separate individual owners of each severed portion and can deal with that portion as also the tenant thereof as individual owner/

lessor. The right of joint lessors contemplated by Section 109 comes to be possessed by each of them separately and independently. There is no right in the tenant to prevent the joint owners or co-lessors from partitioning the tenanted accommodation among themselves."

The apex Court Mrs. Meenal Eknath Kshirsagar V. M/s Traders and Agencies and Anr. J.T 1996 (6) S.C, P-468 has held that. Where the landlord has not available with him any other premises, he is the best judge for release of the accommodation for residential purposes. The observations of the Apex Court are quoted below:-

"The fact that the appellant is the owner of the suit premises and that has does not own any other premises is the City of Bombay is not in dispute. She does not possess, even as a tenant, any premises in Bombay. No doubt, she would be entitled to stay in the premises of which her husband had parted with possession of such premises and the same were occupied by her husband's brother, it cannot be said the said premises were available to her and by not referring to those facts she had come to the court with unclean hands and that by itself was sufficient to disentitle her from getting a decree of eviction. If the appellant believed that the 'Olympus' flat of which her husband was a tenant was not available for occupation as the same was vacated by her husband many years back and was occupied by Sridhar and his family and that it was not possible or convenient for her and her family to go and stay there, it was not absolutely necessary for her to refer to those facts in her plaint.

"The evidence produced by the applicant did disclose that the firm had required Eknath to vacate the same and it

was not right for the Appellate Bench and the High Court to brush aside that evidence on the ground that it was "internal correspondence of the company". Eknath could not have occupied the said flat as a matter of right and in view of the arrangement between the firm and Mr. Kalra as disclosed by the evidence on record it cannot be said, in the context of judging the bonafide requirement of the appellant , that the said flat was available to her and her husband for occupation even after 1984 . Even if it is believed that Eknath had not really vacated the said flat in 1984 and continued to be in possession, it cannot be said that the possessions of the said flat was such as would disentitle the appellant to get a decree of eviction . Being a licensee Eknath's possession of that flat was precarious and, therefore, could not have been considered as suitable alternative accommodation."

As pointed out by this court it is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement. If the landlord desires to beneficially enjoys his own property when the other property occupied by his as a tenant or on any other basis is either insecure or inconvenient it is not for the courts to dictate him to continue to occupy such premises."

In Muni Lal and others V. Prescribed Authority and others, AIR 1978 Supreme Court p-29 the Apex Court has held that bonafide requirement and comparative hardship is a finding of fact and cannot be interfered Articles 226 of the Constitution of India. The observations of the Apex Court are quoted below:-

"P.N. Bhagwati,J. :- The only ground on which the decision of the High Court is challenged in this appeal is that the High Court has not examined the question of comparative hardship of

the landlord and the tenant in rejecting the writ petition of the appellant, we find that the prescribed authority did consider the comparative hardship of the landlord and the tenant in the light of the evidence before it and came to the conclusion that the need of the landlord was greater than that of the tenant The District Judge also affirmed this view in appeal and when the matter came to the High Court by way of writ petition, the High Court also pointed out in its judgment that "on perusal the appellate court found that the need of the respondent No.3 was greater than that of the petitioners. This is also a finding of fact and it is not possible to disturb the same in these proceedings." There can be no doubt that a finding that the need of respondent No.3. landlord was greater than that of the appellant/tenant is a finding of fact and when the High Court has refused to interfere with this finding of fact, we cannot find fault with the High Court, even if the findings were wrong on the evidence before this Court. It is not for the High Court in the exercise of its jurisdiction under Act. 226 of the Constitution to reappraise the evidence and come to its own conclusion which may be different from that reached by the District Judge or the Prescribed Authority. We do not therefore, see any reason to interfere with the decision of the High Court."

The Writ Petition is also concluded by the judgment in Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta (1999) 6 SCC Page-222, where after relying upon the judgment in the Apex Court in Smt. Sarla Ahuja in 1996 (5) SCC Page-353 it has been held that the choice of the landlord has to be respected and the court will not impose its own wisdom as regards such choice. The observations of the Apex Court are quoted below:-

"In Sarla Ahuja V.United Insurance Co. Ltd. This Court has held that the Rent Controller should not proceed on the

Assumption that the landlord's requirement is not find. When the landlord shows a prima available to be drawn. Is is not for the tenant to dictate terms to the landlord tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

" In Pratima Devi V. T.V Krishnan this Court has held that in considering the availability of an alternative accommodation , not availability merely but also whether the landlord has the legal right to such accommodation has to be considered."

"Reverting back to the case at hand, the landlord has been living on the ground floor of the Defence Colony house. It was conceded at the Bar that as on the day, the family of the landlord consists of the landlord himself(a practicing doctor) his son(again a practicing doctor), daughter in law and two grandchildren who are gradually growing in their age. Looking at the size of the family, availability of three bedrooms in the premises in which the sense of decency-not to talk of comfort and convenience . There is nothing unreasonable in a family with two practicing doctors as members thereof needing a room or two or a room with a verandh to be used as a residential clinic divided into a consultation room and an waiting place for the patients. A drawing room, a kitchen, a living room and a garage are the bare necessities for a comfortable living. The landlord has been living in the Defence Colony locality for more than 35 yrs. The first floor which was let out to the tenant in the year 1978 as being an accommodation surplus with the landlord has with the lapse of time become a necessity for occupation by the landlord and his family members. More than ten years by now have been lost in litigation. The death of the wife of the landlord, and the death of the landlord's mother in law, are events which have hardly any bearing

on the case of the felt need of the landlord. The need as pleaded and proved by the landlord is undoubtedly natural, sincere and honest and hence, a bonafide need. There is a no material available on record to doubt the genuineness of such need. It continues to subsist inspite of the two deaths. It is not the case of the appellant tenant that while seeking eviction of the tenant the landlord is moved by any ulterior motive or is guided by some other things in his mind. It will be most unreasonable to suggest that the landlord may continue to live on the ground floor of the Defence Colony house and some members of the family may move to the Survodaya Enclave house if the whole family cannot be conveniently and comfortably accommodated as one unit in the Defence Colony house. It would be equally unreasonmable to suggest that the entire family must shift to the Survodaya Enclave house which is admittedly situated at a distance of above 7 to 5 km. from Defence colony. The landlord and his family are used to living in Defence Colony, where they have developed friends and acquaintances, also familiarity with the neighbourhood and the environment. The patient usually visiting or likely to visit the residential clinic know where their doctor would be available. Shri Arun Jaitley, learned Senior Counsel for the respondent has very rightly submitted that it would not have been the intendment of the rent control law to compel the landlord in such facts and circumstances to shift to a different house and locality so as to permit the tenant to continue to live in the tenanted premises. If he landlord whishes to live with comfort in the house of his own, the law does not command or comple him to squeeze himself tightly into lesser premises protecting the tenants occupancy. In addition, we find that on the date of the initiation of the proceedings, the Survodaya Enclave property was belonging to the wife of the landlord or to one of his sons resident abroad and was in actual occupation of a tenant.

On the death of the wife of the landlord if anyone of the two wills(one which was in existence at the time of initiation of the proceedings or the one, which appears to have been subsequently executed by the landlord's wife and filed before the High Court) was to be given effect to then the ownership in the property has passed on to one son or jointly to four sons of the landlord. If the will itself is excluded from consideration as not proved then also the ownership in the property has passed on to the four sons jointly. The Survodaya Enclave property does not belong to the landlord and is not available for his occupation as an owner. To these facts the applicability of law laid down in Prativa Devi case is squarely attracted. In our opinion the availability of the Sarvodaya Enclave Property is not of any relevance or germane to determining the need and the bona fides of the need of the landlord.

Scope of interference under Article 226/227 of the Constitution of India.

"In Piper V. Harvey (1958) 1 AII.E.R. it has been held that the decision on greater hardship is not liable to be interfered with. The observations of the Court in the aforesaid court are quoted below:-

"I have in mind what this court has said in coplans v King (1) (1947.All. E.R. 393) to the effect that the decision of the country court judge, when considering the balance of hardship, is to all intents and purpose final. It is not the Court of Appeal to interfere when there is evidence on which the judge can reasonable come to the conclusion which he did."

In Robinson V. Donovan, [Dec. 1946] All England Law Reports Annotated . It has been held that no interference can be made after the appellate authority has decided, the favour of the landlord . The findings are quoted below:-

"In the present case the judge decided in favour of the landlord, and I can see no ground for saying that he did not arrive at his conclusion on the issue raised under para(h) on ample evidence. If there was any evidence to support his decision we cannot interfere with it. It is most important in these case that this court should not interfere with findings of fact where there is evidence to support them."

It has been held in Mrs. Rean Drego V. Lalchand Soni P- 147 of the Apex Court as under:-

"According to us, the High Court has traversed far beyond thelimit of its supervisory jurisdiction under Article 227 of the Constitution when the learned Single Judge reversed the decree of eviction which was based on findings of facts arrived at by the fact-findings authority upon the evidence on record. It would have been well for the High Court to remind itself that it was not exercising certiorari jurisdiction under Article 226 of the Constitution but a supervisory scrutiny of records and proceedings of the lower tribunal. By relying on fresh materials which were not before the tribunal, the High Court should not have disturbed findings of facts in exercise of such supervisory jurisdiction. It is now well nigh settled that power under Article 227 is one of Judicial superintendence which cannot be used to upset conclusions of facts, however erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. Way back in 1954, a Constitution Bench of this Court in Waryam Singh and Anr. V Amarnath and Anr. AIR 1954 SC 215, has pointed out that the power of superintendence conferred by Article 227 should be exercised "most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors."

The said decision was made in an appeal which considered an order passed by a Rent Control Court Quoting the aforesaid dictum a three Judge Bench of this Court has in Babhutmal Raichand Oswal V Laxmibai R. Tarte and Anr., AIR 1975 SC 1297, observed thus;

"The power of Superintendents of High Court under Article 227 being extra ordinary is to be exercised most sparingly and only in appropriate, cases. The power, as in the case of certiorari jurisdiction cannot be envoked to correct an error of fact which only a superior court cannot do in exercise of its statutory power as a court of appeal. The High Court cannot, in guise of exercising its jurisdiction under Article 227, convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts. The High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate court or tribunal. It's function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and appreciating it."

"The aforesaid position has been reiterated by the court on subsequent occasions also (vide M/S India Pipe Fitting Co. V/s Fakruddin M.A. Baker & Anr., AIR 1978 SC 45 and Sukhbir Narain V/s Deputy Director of Consolidation, AIR 1987 SC 1645)."

"It is difficult to give an exact definition of the word 'reasonable'. It is often said that "an attempt to give a specific meaning to the word 'reasonable' is trying to count what is not number and measure what is not space." The author of "Words and Phrases(Permanent Edition) has quoted from In re Nice And Schreilber, 123 F. 987, 988 to give a plausible meaning for the said word. He says " the expression 'reasonable' is a relative term, and the facts of the particular controversy must be considered before the

question as to what constitutes reasonable can be determined". It is not meant to be expedient or convenient but certainly something more than that. While interpreting the word 'reasonable' in Section 13 of the Act, the Bombay High Court has suggested in Krishchand Moorijimal V Bai Kalavait, AIR 1973 Bom 46, " that the word 'reasonable' cannot mean convenient or luxurious, though it may not necessarily exclude the idea of convenience and comfort." However, the expression reasonable can be taken as providing an angle which is comfortable or agreeable to reasons, having regard to the facts of the particular controversy."

"In the light of the above admitted factual position when the landlady saysthat she needs more accommodation for her family. There is no scope for doubting the reasonableness of the requirement. Further the above circumstances would raise a presumption that the requirement is bonafide also. The tenant has failed to show that the demand for eviction was made with any oblique motive and in the absence of any evidence the presumption of bonafides stands unrebutted."

"There cannot be any possible contention that the hardships, if any, which my ensue to the tenant in the event of evicition from this tenanted premises,would be more than the hardships which appellant is now facing due to shortage of the space in her possession, particularly in view of the large number of members of the family living here."

Conclusions

In view of the observations made aforesaid, landlord respondents have fully established their bonafide need and comparative hardship in their favour. Further the tanant has available with him the alternative accommodation as referred aforesaid. The

findings therefore being findings of fact cannot be interfered.Under Article 226/227 of the Constitution of India.

In view of the aforesaid facts and circumstances the requirement of the landlord for release of the accommodation has been found to be bonafide by the appellate authority, it requires no interference under Article 226 of the Constitution of India. The landlord has proved bonafide need and comparative hardship in his favour . Both the findings therefore are findings of fact cannot be interfered in the writ jurisdiction. Under Article 226/227 of the Constitution of India.

Consequently, no infirmity has been pointed out in the order passed by the appellate authority. The petitioner is granted time upto 31 December 2003 to vacate the premises provided he gives an undertaking to vacate the premises within the aforesaid period and pays the entire dues uptodate to the respondents. The petitioner shall file an undertaking before the prescribed authority Almorah, within a period of three weeks from today. In case of default in complying the aforesaid conditions, landlord respondent shall be at liberty to execute the order.

In case the petitioner has failed to vacate the premises by the time granted aforesaid the respondent landlord shall be at liberty to execute the order in accordance with law.

Consequently, the writ petition fails and is dismissed . However there will be no order as to costs.

Dated : 1.10.2003

(Rajesh Tandon, J.)